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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

OMAR STRATMAN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
LEISNOI, INC., KONIAG, INC., and	)	
DIRK KEMPTHORNE, Secretary of the	)	
Interior,	)	
	)	
Defendants,	)	
	)	
	)	
KONIAG, INC.,	)	
	)	
Counter-claimant,	)	Case No.: 3:02-cv-0290 (JKS)
	)	
v.	)	
	)	
OMAR STRATMAN,	)	
	)	
Counter-claimed	)	
Defendant.	)	
	)	

**OMAR STRATMAN S MOTION TO STRIKE OR STAY LEISNOI S MOTIONS TO  
DISMISS, AND REQUEST FOR CLARIFICATION OF THE COURT S ORDER OF  
JANUARY 18, 2007**

OverOver the course of the last week, Leisnoi filed five (5) separate and succeOver the courmotionsmotions for dismissalalmotions for dismissal of thismotions for dismissal of this action, alleging se107,107, 109, 111, 118-1, 120). Of these). Of these five). Of these five motions, only the last motion, 2007 (Dk. 120), is responsive to this Court s order of January 18, 2007, which (Dk. 120), is responsive to defendantsdefendants to each file a motion to dismiss for lack of jurisdiction, specifically addressing the issues outlined in the Court s order. (Dk. 103).

TheThe other four motions are completely unrelated to the order. This was noted by Leisnoi itself in its fifth, responsive motion:

LeisnoiLeisnoi has filed aLeisnoi has filed a series ofLeisnoi has filed a series of motions addCourtCourt lacks subjCourt lacks subject mCourt lacks subject matter jurisdiction, such a estoppel,estoppel, lapsing of the statute ofestoppel, lapsing of the statute of limitations,estoppel, lack of judicial standing, and mootness due to the FRITLA ratification.

(Dk. 120, p. 6 n. 2).

Leisnoi sLeisnoi s filLeisnoi s filinLeisnoi s filing of these multiple motions violates the spirit, if nCourt sCourt s order of January 18, 2007. As the Court willCourt s order of January 18, 2007. As the forfor a status conference in order to, among other things, establish a briefing schedule, basedbased on the filing of motions and crosbased on the filing of motions and crossbased on the f procedureprocedure defined by the Court. (Dkprocedure defined by the Court. (Dk. 97) Leisproc arguingarguing thatarguing that a status conference was premature,arguing that a status conference w andand determine whetherand determine whether it hadjurisdictionand determine whether it hadjurisdic thatthatthat Stratman s challenge was moot. (Dk. 99). In its order of January 18, 2007, the

CourtCourt agreed that a status conferenceCourt agreed that a status conference was premature, and CourtCourt agreed that a status conferenceCourt agreed that a status conference was premature, and jurisdictionjurisdictionjurisdictionjurisdictionaljurisdictional issues regarding review of the Secretary's decision. defendantsdefendants were directed to file defendants were directed to file separatedefendants addreaddressinaddressingaddressing the specific issues outlined in the Courts order. Stratman v oppositionopposition toopposition to these motions within 30 days, and the defendants were tooppositi 15 days.

ImplicitImplicit in the Courts order, as Stratman understands it, was thalmplicit in the Cou proceedingsproceedings on Stratman sproceedings on Stratman s claim would be held in abeyance per thethe jurisdictional issues outlined in the Courts order. Also implicit in thethe jurisdictional issues ou thatthat if the Court subsequently concludes that it has jurisdiction, it will hold a status conference to establish a briefing scheduleconference to establish a briefing schedule to address the

LLeisnoLeisnoi sLeisnoi s filing of these multiple motions to dismiss is precisely the type multiplicitousmultiplicitous briefing and piece-meal litigation tmultiplicitous briefing and piece-meal I movedmoved to establish amoved to establish a briefmoved to establish a briefing schedule. As wa conference,conference, the specified procedureconference, the specified procedure under Local Rule to the District Courtto the District Court under the APA, provides forto the District Court under the APA in the form of motions and cross-motions for summary judgment.

ForFor the foregoingFor the foregoing reasons, Stratman requests that theFor the foregoing reas toto dismiss filed by Leisnoi (Dks. 107, 109, 111, 118-1) that are ) that are unrelated to ) that are u outlinedoutlined in the Court s order ofoutlined in the Courts order of January 18, 2007,outlined in the C assertassert and re-file them in conformity with thassert and re-file them in conformity with the ras scheduleschedule that may beschedule that may be ordered by the Court. In the alternative, Stratmans CourtCourt stay any further briefing on Leisnoi s motions pending thCourt stay any further briefing

jurisdictional issues, and extend the time for filing Stratman's response jurisdictional issues, and extend until further order of the Court. Stratman requests that these motions be stricken, until further order than stayed, so that they can be re-filed by Leisnoi as a single brief, in requirements of any subsequently ordered briefing schedule. 16.3(c) provides for the filing of the parties' principal briefs in the 16.3(c) provides for the filing of cross-motion or cross-motion for summary judgment. There is no reason why Leisnoi include the arguments presented in the arguments presented in the arguments presented in single motion or cross-single motion or cross-motion for summary judgment. The filings by a single party is of even greater importance in this filings by a single party is of even greater must already now respond to three separate filings by three separate defendants. Requiring Stratman to respond to multiple filings by each party, will Requiring Stratman to number of other motions filed by the other parties, would not only strain the Court's number of Stratman's time and resources, but would needlessly strain Stratman's time and resources determination of the remaining legal issues presented in this action.

For the same reasons, Stratman also requests that the further substantive motions, by any further substantive motions, be of the jurisdictional issues identified in the Court's order of January 18, 2007.

As a related matter, Stratman also seeks clarification of the Court's order of January 18, 2007 regarding the issues that the Court's order of January 18, 2007 regarding the issues that the Court's order of January 18, 2007 regarding the context of the motions to dismiss for lack of context of the motions to dismiss file. It is not entirely clear to Stratman from the file. It is not entirely clear to Stratman from the file. in the initial round of briefing to address and brief the merits in the initial round of briefing to address and Secretary's decision, in addition to the jurisdictional Secretary's decision, in addition to the ju

identify four discrete issues that it wanted the parties to brief, including:

1)1) whether1) whether the Court has jurisdiction under the APA to review the1) whether the decision, notwithstanding IBLA's determination that it lacked jurisdiction, notwithstanding IBLA's decision, notwithstanding IBLA's challenge, in view of the Secretary's legal conclusion that Stratman's challenge matter jurisdiction and that the Secretary's jurisdiction and that the Secretary's review of IBLA's discretion.

2)2) whether the Court has jurisdiction over Stratman's APA challenge2) whether the Court of the Secretary's determination of the Secretary's determination that Congress mooted Stratman's challenge ANILCA Section 1427.

3)3) in the event3) in the event the Court finds that it has jurisdiction to3) in the event the Court decision decision in the context of Stratman's APA action, whether the Chevron deference standard of review of review applies in reviewing the Secretary's decision and determining the merits of Stratman's APA claim.

4)4) in the event the Court finds that4) in the event the Court finds that it has jurisdiction to decision decision in the decision in the context of Stratman's APA action, and that the Chevron deference of review applies to the Secretary's decision, whether Chevron deference requires the Court to accept the Secretary's interpretation of ANILCA that Congress mooted Stratman's challenge by enacting that statute.

TheThe first two issuesThe first two issues clearly relate to the preliminary question of whether has jurisdiction to review the Secrhas jurisdiction to review the Secretahas jurisdiction to review challenge.challenge. However, the third and fourth issues go beyond the threshold issuechallenge. How the Court has jurthe Court has jurisdiction the Court has jurisdiction to review the Secretary's Stratman's Stratman's APA challenge to the SecStratman's APA challenge to the Secretary's

Secretary's decision is subject to a deferential standard of review, is one of the primary standards of review, is one of the other standards of review, and the Court determines that it has the jurisdiction to review any applicable standard of review. The fourth issue, of whether Chevron deference, if it applies at all, requires the Court to accept it, requires the Court to apply it to the heart of Stratman's challenge. Whether or not the Secretary's decision is a permissible construction of ANILCA Section 1427 and the analysis and interpretation of the statute adopted under Chevron, are key issues in determining the merits of Stratman's APA challenge, and require the examination of both the challenge, and the analysis and interpretation of the statute adopted under Chevron. These last two issues are unrelated to the first two preliminary jurisdictional issues, and go directly to the merits of Stratman's APA challenge to the Secretary's decision.

In its order of January 18, 2007, the Court directed the defendants to dismiss for lack of jurisdiction, to dismiss for lack of jurisdiction, and imposed a motion to dismiss for lack of jurisdiction. The defendant bears the burden in bringing such a motion. The defendant bears both an opening and a reply brief, while Stratman was given both an opening and a reply brief. While this briefing schedule may be appropriate for their motions. While this briefing schedule may be appropriate for jurisdictional issues outlined above, it may not be appropriate for jurisdictional issues outlined below, which go to the merits of Stratman's APA claim. The burden of proof, as the appellant in this action.

We wish to advise the Court that Koniag has recently sought, and agreed, that Koniag could have an additional week, until agreed.

Koniag, as we understand it, intends to file a single brief in support of Koniag, as we understand it, because Koniag believes its positions are interrelated. Koniag, as we understand it, has no objections to Stratman filing a single brief in reno objections to Stratman filing a single brief in reno objections to Stratman s briefing deadline back an additional week in consideration of the additional time sought by Koniag. The parties are working towards sought by Koniag. The parties are working towards a stipulation has not yet been agreed to by all concerned. a stipulation has not yet been agreed to by the stipulation that the parties may reach does not necessarily address all the stipulation that the parties set forth above, and the stipulation set forth above, and the stipulation may not be January 18, 2007, order.

RESPECTFULLY submitted this 9th day of March, 2007.

s/Michael J. Schneider  
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**CERTIFICATE OF SERVICE**

I hereby certify that ***OMAR STRATMAN S***  
***MOTION TO STRIKE*** was served electronically  
on the 9th day of March, 2007, on Bruce M. Landon,  
R. Collin Middleton, and John R. Fitzgerald.

s/Michael J. Schneider